

**IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA.**

**CWP NO.95 of 2006.
Judgment Reserved on 27.4.2007.
Date of decision: May 9th ,2007.**

The Una District Consumer Marketing Federation Ltd.

..... Petitioner.

Vs.

Kuldeep Singh.

..... Respondent.

Coram

The Hon'ble Mr.Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? Yes.

For the petitioner: Mr.Yoginder Paul, Advocate.

For the respondent: Mr.Subhash Sharma, Advocate.

Surinder Singh, J.

The petitioner-`The Una District Consumer Marketing Federation Ltd.', is under liquidation. Shri Prem Chand its Liquidator has filed the instant petition to set-aside the award dated 28.11.2005 (Annexure PC), passed by the Labour court in Application No.421 of 2004.

In fact the respondent was a driver under the employment of the Petitioner. He had filed an application under Section 33-C(2) of the Industrial Dispute Act, 1947 (in short the Act),before the Presiding Judge, Labour Court-cum-Industrial Tribunal, Dharamshala (HP), claiming Rs.20,628/- after his retirement on 31.3.98, on account of the revision of pay scales w.e.f. 1.1.1996, being a difference between the old and new pay-scales, from the existing scale of Rs.950-1800 to Rs.3200-5300.

The petitioner herein resisted his claim before the Labour Court on the point of jurisdiction and contended that on 28.2.1997 the Additional Registrar, Cooperative Societies, Dharamshala (HP) put the petitioner federation under liquidation due to incurring heavy losses. The respondent, herein had filed a case claiming the arrears of pay before the

Whether reporters of local Papers may be allowed to see the judgment? No.

District Consumer Dispute Redressal Forum, Una on account of revision of pay scales, which was dismissed for want of jurisdiction. Thereafter he had approached the State Administrative Tribunal, and filed O.A. No.546 of 1992 and raised a dispute analogous to the present dispute. That matter is still pending before the Administrative Tribunal.

To resolve the controversy the Labour Court had framed the following issues on 7.4.2005:-

1. **Whether the petitioner is entitled for a sum of Rs.20,628/- along with the interest @ 12% as alleged?**
OPP.
2. **Whether the respondent is not covered with the definition of industry as per the Industrial Dispute Act. If so, its effect?**
OPR.
3. **Whether the petitioner is barred as per the provisions of section 92 of the Cooperative Societies Act?**
OPR.
4. **Whether the petition is also not maintainable in view of the provisions of the Section 72 of the Co-operative Societies Act, as alleged?**
OPR.
5. **Relief.**

Before the Labour Court, the parties went to trial on the aforesaid issues and led their evidence in support of their respective claims. On going through the evidence and upon hearing the parties, the Labour Court decided Issue No.1 in favour of the respondent herein and other issues were decided against the petitioner. Accordingly, the application of the respondent Kuldeep Singh, an ex-driver was allowed. The petitioner was directed to pay to the claimant the amount as claimed within two months, failing which interest @ 6% per annum was levied from the date of award till its realization.

The petitioner has assailed the impugned award of the Labour Court in this petition, on the ground of maintainability of application under Section 33-C(2) of the Industrial Disputes Act and jurisdiction.

We have heard the learned counsel for the parties and have gone through the record.

Shri Yoginder Paul, learned counsel for the petitioner has vehemently argued that the Labour Court acts as an executing court under Section 33-C(2) of the Act, therefore, the scope and jurisdiction of the Labour Court is very limited. The learned court submitted that the powers of the Labour Court under the above provision is to enforce the existing right and not to adjudicate a disputed claim. It is argued that the matter regarding revision of pay-scale is a disputed claim and is still pending before the Administrative Tribunal. Therefore, the claim filed by the respondent before the Labour Court was not maintainable.

Contra, the learned counsel for the respondent has supported the impugned award.

The sole question for determination before us is, whether in the given circumstances, the Labour Court has the jurisdiction to try and determine the matter? To decide this point, it shall be relevant to reproduce the provision of Section 33-C of the Act, which reads as under:-

“33C.Recovery of money due from an employer.-

- (1) *Where any money is due to a workman from an employer under a settlement or an award or under the provisions of [Chapter V-A or Chapter V-B), the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignees or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrears of land revenue:***
- Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:***

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

- (2) *Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made in this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government [within a period not exceeding three months.]*

[Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.]

- (3) xxx xxxx xxxx
- (4) xxx xxxx xxxx
- (5) xxx xxxx xxxx.”

The State of Himachal Pradesh has also framed the Industrial Dispute Rules, 1974. Rule 66 thereof provides as under:-

“Where any money is due from an employer to a workman or a group of workman under a settlement or an award or under the provisions of Chapter V-A, the workmen or the group of workmen, as the case may apply in Form ‘M’ for the recovery of the money due;

Provided that in the case of a person authorized in writing by the workman, or in the case of the death of the workman, the assignee or the heir of the deceased workman, the application shall be made in form ‘N’.

- (3) *Where any workman or a group of workmen is entitled to receive from the employer any money, or any benefit which is capable of being computed in terms of money, the workman or the group of workmen, as the case may be, may apply to the specified Labour Court in Form ‘C’ for the determination of the amount due or as the case may be, the amount at which such benefit should be computed.”*

Thus from the perusal of the above provisions, it is manifest that the Labour Court can only assume the jurisdiction with respect to the claim filed under Section 33-C(2) of the Act if right to the benefit sought to be computed is existing one or adjudicated upon or is provided for, as held in **Cement Corporation of India vs. The Presiding Officer, Labour Court and others** [Latest HLJ 2003 (HP) 642] and in **Balbir Singh v. Nikka Ram & Others** [2005(3) Shim.I.C.346].

The proceedings contemplated by Section 33-C(2) are analogous to execution proceedings governed by the Code of Civil Procedure, would be competent to interpret the award on which the claim is based and on the disputed question of fact the Labour Court has no jurisdiction to pass an award under the said section.

Further in **U.P. State Road Transport Corporation v. Shri Birendera Bhandari** [AIR 2006 Supreme Court 3220], where a claim was filed under Section 33-C(2) of the Industrial Disputes Act for payment of arrears relating to difference of salary, leave encashment, arrears of dearness allowance arising out of implementation of recommendations of the 5th Pay Commission, was allowed by the Labour Court and upheld by the High Court was held to be misconceived in defensible and set aside.

Applying the aforesaid settled principle of law in the case in hand, we are in total agreement with the contention raised by the learned counsel for the petitioner that exercise of the jurisdiction by the Labour Court under Section 33-C(2) of the Act is totally incorrect and unjustified, in the circumstances given above, more specifically when there is no preexisting benefit or flowing from a preexisting right, the facts are highly disputed regarding the applicability of the implementation of 5th Pay Commission and on the same facts the matter is pending before H.P. State Administrative Tribunal, for final adjudication. Accordingly, we hold

that the Labour Court has no jurisdiction. Therefore, **we set-aside the impugned award dated 28.11.2005 (Annexure PC), passed by the Labour Court in Application No.421 of 2004 filed by the respondent.**

The petition of the Federation is accordingly allowed. No orders as to costs.

C.M.P.s No.118/2006 & 622/2007.

Infructuous

**(Deepak Gupta)
Judge.**

May 9th ,2007.
(Pds)

**(Surinder Singh)
Judge.**